

## **REMARKS**

### **The Office Action**

Claims 1-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kong, et al. (U.S. Patent No. 6,700,881, herein after referred to merely as Kong) in view of Yang (U.S. Patent Application, Pub. No. 2002/0171568 A1).

### **Arguments/Comments**

The present application is directed to a method and/or system for verifying the appropriate operation of a Walsh or similar code allocator in a CDMA or similar wireless network. Typically, it is desired that the codes in use at any given time be mutually orthogonal to one another. The present application is directed to verifying that, in fact, a given allocator is meeting this objective.

For example, claim 1 calls for monitoring the allocator to identify the code being allocated. It is then determined if the code itself, its ancestral parents or descendants are currently busy. If so, then an error in allocator operation is indicated.

Similarly, claim 10 calls for a verification module arranged to receive allocator outputs. The module determines for each output code allocation whether or not it would result in at least two non-orthogonal codes being concurrently busy.

Neither Kong nor Yang, either individually or in combination, expressly teach or fairly suggest the forgoing.

Kong merely teaches a method or algorithm for assigning orthogonal codes. Notably, nowhere does Kong teach or suggest a method for, or module that, monitors the allocating device to verify that it is, in fact, performing the code assignments, or otherwise operating, properly. Kong simply teaches a method for selecting which code to allocate, and then allocating said code. After the allocation has been made, there is no method taught or module disclosed that checks or determines if the allocation was made properly.

The Examiner suggests that Kong's indication of unavailable codes is equivalent to, or an obvious variant of, the claimed error indication of claim 1. See, Office Action, last paragraph on page 3, and first paragraph on page 4. However, this comparison does not hold. These elements are not obvious in view of one another nor can they be fairly equated. As claimed, the indication is for an "error" in "allocator operation." Simply because there are no codes left to allocate does not mean that the allocator is not

operating properly. Typically, there are a finite number of codes available, and under heavy traffic conditions, a code may not be available for allocation. This does not mean the allocator is erroneously operating. In fact, in Kong, when there are no more orthogonal codes left to assign, then indicating a lack of available codes is proper operation of the code assignment process. More specifically, the cited portions of Kong (i.e., FIGURE 9, step 929 and the related text) teach indicating a proper operational state of the code assignment mechanism. Conversely, claim 1 call for indicating an error in the allocator's operation.

Moreover, Yang fails to make-up for the short comings in Kong's teachings. Specifically, Yang is directed to using Gray code labels to identify and search for orthogonal codes. While Yang suggests a code assignment method employing Gray code labeling, nowhere does Yang teach or suggest a method or module that monitors an allocator to verify that it is properly operating, i.e., properly allocating codes. Yang is simply not concerned with such a function or device. As with Kong, Yang simply proposes a method to make the assignments, not a method to verify that the device making them is operating properly. Contrary to that which is claimed in claim 1, Yang teaches neither monitoring an allocator nor indicating an error in its operation.

As to claim 10, neither Kong nor Yang teach or disclose the claimed verification module that is arranged to receive an allocator's output. At best, it can be said that they suggest methods for assigning codes, i.e., code assigning devices. They do not teach a module that receives the output of the code assigning device to verify that it is operating appropriately, i.e., that it is only assigning mutually orthogonal codes at any given point in time. Rather, Kong and Yang both assume proper execution of their respective methods by whatever device is carrying them out.

### CONCLUSION

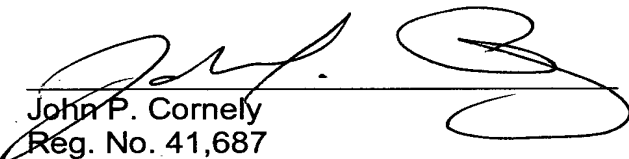
For the reasons detailed above, it is respectfully submitted all claims remaining in the application are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone the below signed, at (216) 861-5582.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
MINNICH & McKEE, LLP

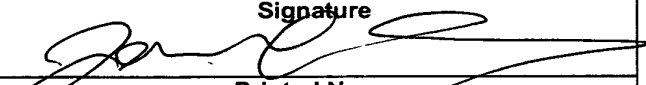
April 4, 2005  
Date

  
John P. Cornely  
Reg. No. 41,687  
1100 Superior Avenue  
7<sup>th</sup> Floor  
Cleveland, Ohio 44114-2579  
(216) 861-5582

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